

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA
Minute Entry

Hearing Information:

Debtor: FARWEST PUMP COMPANY
Case Number: 4:17-BK-11112-BMW **Chapter:** 11
Date / Time / Room: WEDNESDAY, JANUARY 16, 2019 10:30 AM COURTRoom 446
Bankruptcy Judge: BRENDA M. WHINERY
Courtroom Clerk: REBECCA VOLZ
Reporter / ECR: LATOSHA TRIPP

Matters:

- 1) EMERGENCY MOTION FOR AUTHORITY TO LEASE DRILL RIG TO FARCO PERFORACIONES Y BOMBEO S.A. DE C.V., AND PERMIT DRILL RIG TO BE IMPORTED INTO MEXICO (SET AT HEARING HELD 11/07/18) (CONT. FROM 11/14/18) (RESCHEDULED FROM 12/05/18) (CONT. FROM 12/06/18)
R / M #: 363 / 0
- 2) STATUS HEARING RE: COMMITTEE'S LIQUIDATING PLAN (SET AT HEARING HELD 12/06/18)
R / M #: 175 / 0
- 3) STATUS HEARING RE: DEBTOR'S SECOND AMENDED PLAN OF REORGANIZATION (SET AT HEARING HELD 12/06/18)
R / M #: 223 / 0
- 4) COMMITTEE'S MOTION FOR STANDING (CONT. FROM 09/19/18) (CONT. FROM 10/03/18) (CONT. FROM 11/07/18) (CONT. FROM 11/14/18) (RESCHEDULED FROM 12/05/18) (CONT. FROM 12/06/18)
R / M #: 291 / 0
- 5) COMMITTEE'S MOTION TO LIMIT THE DEBTOR'S USE OF ESTATE PROPERTY (CONT. FROM 09/19/18) (CONT. FROM 10/03/18) (CONT. FROM 11/07/18) (CONT. FROM 11/14/18) (RESCHEDULED FROM 12/05/18) (CONT. FROM 12/06/18)
R / M #: 293 / 0
- 6) STATUS HEARING RE: MOTION FOR ALLOWANCE AND IMMEDIATE PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM OF FLASKA JCB (RESCHEDULED FROM 12/12/18) (RESCHEDULED FROM 12/05/18) (CONT. FROM 12/06/18)
R / M #: 357 / 0
- 7) STATUS HEARING RE: FLASKA JCB'S MOTION FOR LEAVE TO FILE LATE PROOF OF CLAIM (RESCHEDULED FROM 12/05/18) (CONT. FROM 12/06/18)
R / M #: 358 / 0
- 8) MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM AND REQUEST FOR PAYMENT FILED BY T & D MACHINE, INC.
R / M #: 392 / 0
- 9) EVIDENTIARY HEARING RE: DEBTOR'S MOTION TO APPROVE 9019 SETTLEMENT WITH CREDITOR DAVID LEONARD (RESCHEDULED FROM 12/05/18) (CONT. FROM 12/06/18)
R / M #: 280 / 0

Appearances:

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KASEY NYE, REPRESENTING FARWEST PUMP COMPANY AND APPEARING IN PERSON
JOHN SMITH, REPRESENTING THE COMMITTEE OF UNSECURED CREDITORS AND
APPEARING IN PERSON
JILL PERRELLA, REPRESENTING FLASKA JCB AND APPEARING IN PERSON
JEFF SKLAR, REPRESENTING ANC ORCHARD LLC, BMR III LP, AND THE MORGAN ROSE
RANCH LP AND APPEARING IN PERSON
REBECCA O'BRIEN, REPRESENTING DOUG AND CHRISTINA DUNLAP AND HIGH DESERT
IRRIGATION AND APPEARING IN PERSON
ALAN SOLOT, REPRESENTING T & D MACHINE AND APPEARING IN PERSON
RUSSELL STOWERS, REPRESENTING DOUG AND CHRISTINA DUNLAP AND HIGH DESERT
IRRIGATION AND APPEARING IN PERSON
ISAAC ROTHSCHILD, REPRESENTING DAVID LEONARD, PLC AND APPEARING IN PERSON
DAVID LEONARD, APPEARING IN PERSON AS A WITNESS
CLARK VAUGHT, APPEARING IN PERSON AS A WITNESS
CHANNA VAUGHT, APPEARING IN PERSON AS A WITNESS
JACOB SPARKS, REPRESENTING UMB BANK AND APPEARING BY TELEPHONE

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Proceedings:

ITEM 1: EMERGENCY MOTION FOR AUTHORITY TO LEASE DRILL RIG TO FARCO PERFORACIONES Y BOMBEO S.A. DE C.V., AND PERMIT DRILL RIG TO BE IMPORTED INTO MEXICO (SET AT HEARING HELD 11/07/18) (CONT. FROM 11/14/18) (RESCHEDULED FROM 12/05/18) (CONT. FROM 12/06/18)

ITEM 2: STATUS HEARING RE: COMMITTEE'S LIQUIDATING PLAN (SET AT HEARING HELD 12/06/18)

ITEM 3: STATUS HEARING RE: DEBTOR'S SECOND AMENDED PLAN OF REORGANIZATION (SET AT HEARING HELD 12/06/18)

ITEM 4: COMMITTEE'S MOTION FOR STANDING (CONT. FROM 09/19/18) (CONT. FROM 10/03/18) (CONT. FROM 11/07/18) (CONT. FROM 11/14/18) (RESCHEDULED FROM 12/05/18) (CONT. FROM 12/06/18)

ITEM 5: COMMITTEE'S MOTION TO LIMIT THE DEBTOR'S USE OF ESTATE PROPERTY (CONT. FROM 09/19/18) (CONT. FROM 10/03/18) (CONT. FROM 11/07/18) (CONT. FROM 11/14/18) (RESCHEDULED FROM 12/05/18) (CONT. FROM 12/06/18)

ITEM 6: STATUS HEARING RE: MOTION FOR ALLOWANCE AND IMMEDIATE PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM OF FLASKA JCB (RESCHEDULED FROM 12/12/18) (RESCHEDULED FROM 12/05/18) (CONT. FROM 12/06/18)

ITEM 7: STATUS HEARING RE: FLASKA JCB'S MOTION FOR LEAVE TO FILE LATE PROOF OF CLAIM (RESCHEDULED FROM 12/05/18) (CONT. FROM 12/06/18)

ITEM 8: MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM AND REQUEST FOR PAYMENT FILED BY T & D MACHINE, INC.

ITEM 9: EVIDENTIARY HEARING RE: DEBTOR'S MOTION TO APPROVE 9019 SETTLEMENT WITH CREDITOR DAVID LEONARD (RESCHEDULED FROM 12/05/18) (CONT. FROM 12/06/18)

ITEM 1

Mr. Nye reports that the parties have not reached an agreement regarding the drill rig lease. He requests a continued hearing.

COURT: A CONTINUED HEARING IS SET FOR 03/13/19.

10:34 AM

ITEM 3

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Mr. Nye reports that the debtor is providing additional documentation as requested by the committee. He believes the parties might be able to work out a joint plan. He requests a continued status hearing regarding the debtor's second amended plan.

COURT: A CONTINUED STATUS HEARING IS SET FOR 03/13/19.

10:35 AM

ITEM 2

Mr. Smith reports that the parties have been negotiating but the committee is concerned about the debtor's lack of funds. He discusses the funds currently in the debtor's possession. The debtor intends to fund a plan through insurance proceeds which may or may not be a viable option. The committee needs approximately \$500,000.00 to fund its plan. He requests an evidentiary plan confirmation hearing for the Court to consider the committee's plan.

Depending upon the Court's ruling with respect to the 9019 settlement, the debtor may end up with an impaired, consenting class and the evidentiary hearing on the debtor's plan can be set for the same date and time. He may be filing a motion to convert this case. The committee is also considering putting the administrative claims in to an administrative trust.

COURT: AN EVIDENTIARY PLAN CONFIRMATION HEARING IS SET FOR THURSDAY 05/02/19 AT 10:00 A.M. ALL PARTIES AND WITNESSES ARE TO APPEAR IN TUCSON COURTROOM 446 FOR THE EVIDENTIARY HEARING. A STATUS HEARING IS SET FOR WEDNESDAY 04/17/19. PARTIES MAY APPEAR IN TUCSON COURTROOM 446 OR PHOENIX COURTROOM 301 FOR THE STATUS HEARING.

Mr. Nye informs the Court that the debtor does not have a lot of cash in hand but the debtor has been making substantial adequate protection payments.

The Court states that if a plan does not get confirmed, then the case will be dismissed or converted with or without a motion.

10:41 AM

ITEM 4

Mr. Smith requests that the motion for standing track the evidentiary hearing.

COURT: A STATUS HEARING IS SET FOR 04/17/19.

ITEM 5

Mr. Smith requests that the motion to limit use of estate property track the evidentiary hearing. There committee is still concerned. There was a commission payment made to an insider without approval.

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COURT: A STATUS HEARING IS SET FOR 04/17/19.

10:43 AM

ITEM 6 AND ITEM 7

Mr. Nye requests a continued hearing.

Mr. Perrella states that she has not had any communication from Debtor's counsel. She would like to proceed on the motions and requests that oral arguments be set. The debtor did not rebut the assertion that the expenses were necessary to preserve the estate. An evidentiary hearing is not needed. Her client can provide a declaration if needed with respect to the motion for an administrative claim. It is within the Court's discretion to grant or deny the motion for leave to file a late claim.

COURT: ORAL ARGUMENTS REGARDING FLASKA JCB'S MOTION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM AND MOTION FOR LEAVE TO FILE A LATE PROOF OF CLAIM ARE SET FOR 03/13/19. IF THE PARTIES ARE ABLE TO WORK OUT A RESOLUTION, THEN THE HEARING MAY BE VACATED.

10:46 AM

ITEM 8

Mr. Nye reports that the fire occurred on a property that is owned by the Vaughns and leased to the debtor and Reliant. The yard is Reliant's. The debtor believes Reliant is the potentially liable party.

Mr. Solot states that he only learned today about the joint occupancy of the property and the fire occurred back in May 2018. Part of the problem is the lack of information. There is a valid administrative claim and the claim needs to be valued. It is unknown how much the debtor owes.

The Court states that there is not enough information for this Court to make a determination. There is nothing before this Court indicating that the damages were the result of a post-petition tort, the debtor committed that post-petition tort, or that the amount of the damages is \$50,000.00. It appears that an evidentiary hearing is needed. Should the Court set a status hearing or an evidentiary hearing?

The parties agree to a status hearing.

COURT: A STATUS HEARING IS SET FOR 03/13/19.

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The Court recesses at 10:50 a.m. and reconvenes at 11:09 a.m.

ITEM 9

Mr. Stowers reports that the parties have reached a resolution regarding the declaration of David J. Leonard. The Dunlaps' objections are withdrawn. The declaration of Mr. Leonard will be admitted, and it will serve as Mr. Leonard's direct testimony. He will begin with Mr. Leonard's cross examination.

The Court explains that an exhibit will only be admitted if it is specifically referenced during testimony.

****11:11 AM****

Mr. David J. Leonard is sworn by the clerk and cross examined by Mr. Stowers.

Mr. Leonard amends his declaration at paragraph 7 on the record.

****11:54 AM****

Mr. John Smith examines Mr. Leonard.

****11:57 AM****

Mr. Isaac Rothschild examines Mr. Leonard.

****12:00 PM****

Mr. Russell Stowers recross examines Mr. Leonard.

The Court recesses at 12:00 p.m. and reconvenes at 1:02 p.m.

Mr. Clark Vaught is sworn by the clerk and examined by Mr. Nye.

****1:11 PM****

Mr. Russell Stowers cross examines Mr. Vaught.

****1:17 PM****

Mr. John Smith examines Mr. Vaught.

****1:21 PM****

Mr. Isaac Rothschild examines Mr. Vaught.

****1:22 PM****

Mr. Kasey Nye redirects Mr. Vaught.

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****1:23 PM****

Ms. Channa Vaught is sworn by the clerk and examined by Mr. Nye.

****1:34 PM****

Mr. Russell Stowers cross examines Ms. Vaught.

****1:53 PM****

Mr. John Smith examines Ms. Vaught.

****1:57 PM****

Mr. Isaac Rothschild examines Ms. Vaught.

Testimony is concluded at 1:58 p.m.

****2:00 PM****

The parties discuss the exhibits.

Mr. Nye offers Exhibits 1, 2, 3, 4, 6 and 7 for admission.

There are no objections.

COURT: DEBTOR'S EXHIBITS 1, 2, 3, 4, 6 AND 7 ARE ADMITTED. THE COURT NOTES THAT EXHIBIT 7 IS ADMITTED AS AMENDED ON THE RECORD.

Mr. Stowers offers Exhibit I for admission. Exhibits C and D were referenced for undisputed dates and do not need to be admitted.

There are no objections.

COURT: EXHIBIT I IS ADMITTED.

Mr. Nye offers a closing argument. He argues that the settlement should be approved.

****2:04 PM****

Mr. Stowers offers a closing argument. He argues that the settlement should not be approved.

The Court summarizes the proposed settlement. Mr. Leonard asserted a pre-petition claim of approximately \$392,000.00. He claims an absolute assignment of the insurance proceeds. It appears from the proposed settlement that the parties have agreed to split the insurance

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proceeds 50/50. Once Mr. Leonard has received \$200,000.00, the remaining amount of his claim will be treated as a general, unsecured claim. Once Mr. Leonard receives his \$200,000.00, any claim Mr. Leonard had or could have had in any future insurance proceeds is gone.

Mr. Stowers argues that there is not a meeting of minds on the settlement agreement, so the accounting matters. What has been paid thus far if anything?

The Court states that the numbers are set in the proposed settlement. There may be some dispute as to the exact numbers, but the parties have chosen to enter in to this agreement rather than continue to litigate. Is the Court misunderstanding the terms?

Mr. Nye states that the Court's understanding of the proposed agreement is correct.

Mr. Rothschild agrees that the Court's understanding is correct.

Mr. Smith states that the committee is requesting that if the settlement is approved, any proceeds that come to the debtor be set aside in a segregated account.

COURT: THIS MATTER IS UNDER ADVISEMENT. THE COURT WILL ISSUE ITS RULING AS SOON AS POSSIBLE.

SUBSEQUENT TO THE HEARING

COURT: THE CONTINUED HEARING REGARDING THE DEBTOR'S EMERGENCY MOTION TO LEASE DRILL RIG IS RESCHEDULED TO THURSDAY 03/21/19 AT 10:45 AM. THE STATUS HEARING REGARDING THE DEBTOR'S SECOND AMENDED PLAN AND T & D MACHINE'S MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE IS RESCHEDULED TO THURSDAY 03/21/19 AT 10:45 A.M. THE ORAL ARGUMENTS REGARDING FLASKA JCB'S MOTION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM AND MOTION FOR LEAVE TO FILE A LATE PROOF OF CLAIM ARE RESCHEDULED TO THURSDAY 03/21/19 AT 10:45 A.M. PARTIES MAY APPEAR IN TUCSON COURTROOM 446 OR PHOENIX COURTROOM 301 ON 03/21/19.

AN EVIDENTIARY PLAN CONFIRMATION HEARING REGARDING THE COMMITTEE'S PLAN IS SET FOR THURSDAY 05/02/19 AT 10:00 A.M. ALL PARTIES AND WITNESSES ARE TO APPEAR IN TUCSON COURTROOM 446 FOR THE EVIDENTIARY HEARING ON 05/02/19. THE STATUS HEARING REGARDING THE EVIDENTIARY HEARING IS RESCHEDULED TO WEDNESDAY 04/17/19 AT 10:45 A.M. THE STATUS HEARING REGARDING THE COMMITTEE'S MOTION FOR STANDING AND MOTION TO LIMIT USE OF ESTATE PROPERTY IS RESCHEDULED TO WEDNESDAY 04/17/19 AT 10:45 A.M. AS WELL. PARTIES MAY APPEAR IN TUCSON COURTROOM 446 OR PHOENIX COURTROOM 301 ON 04/17/19.